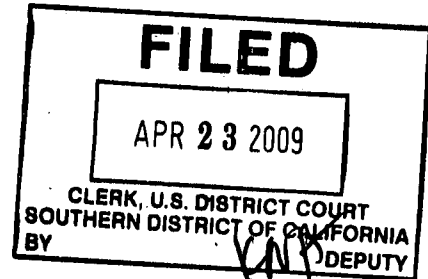


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7 Attorneys for Plaintiff
 8 Patricia Ruben



10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Patricia Ruben 14 15 Plaintiff, 16 v. 17 LVNV Funding LLC and Mann 18 Bracken LLC 19 Defendants.	13 Case Number: 14 09 CV 0852 DMS JMA 15 Complaint For Damages 16 Jury Trial Demanded
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21 **INTRODUCTION**

- 22 1. The United States Congress has found abundant evidence of the use of
 23 abusive, deceptive, and unfair debt collection practices by many debt
 24 collectors, and has determined that abusive debt collection practices
 25 contribute to the number of personal bankruptcies, to marital instability, to the
 26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 28 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

ORIGINAL

of

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Patricia Ruben, ("Plaintiff"), through Plaintiff's attorneys, brings this action to
14 challenge the actions of LVNV Funding LLC and Mann Bracken LLC,
15 ("Defendants"), with regard to attempts by Defendants to unlawfully and
16 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
17 Plaintiff damages.

18 4. Plaintiff makes these allegations on information and belief, with the exception
19 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
20 Plaintiff alleges on personal knowledge.

21 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendants
22 were knowing and intentional, and that Defendants did not maintain
23 procedures reasonably adapted to avoid any such violation.

24 JURISDICTION AND VENUE

25 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
26 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

1 7. This action arises out of Defendants' violations of the Fair Debt Collection
2 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
3 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
4 ("RFDCPA").

5 8. Because Defendants do business within the State of California, personal
6 jurisdiction is established.

7 9. Venue is proper pursuant to 28 U.S.C. § 1391.

8 **PARTIES**

9 10. Plaintiff is a natural person who resides in the City of Cabazon, County of
10 Riverside, State of California.

11 11. Defendant Mann Bracken LLC is located in the City of Concord, the County
12 of Contra Costa, and the State of California. Defendant LVNV Funding LLC
13 is located in the City of Charleston, the County of Charleston, State of South
14 Carolina.

15 12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer"
16 as that term is defined by 15 U.S.C. § 1692a(3).

17 13. Defendants are persons who use an instrumentality of interstate commerce or
18 the mails in a business the principal purpose of which is the collection of
19 debts, or who regularly collect or attempt to collect, directly or indirectly,
20 debts owed or due or asserted to be owed or due another and are therefore
21 debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

22 14. Plaintiff is a natural person from whom a debt collector sought to collect a
23 consumer debt which was due and owing or alleged to be due and owing from
24 Plaintiff, and is a "debtor" as that term is defined by California Civil Code §
25 1788.2(h).

1 15. Defendants, in the ordinary course of business, regularly, on behalf of
2 themselves, or others, engage in debt collection as that term is defined by
3 California Civil Code § 1788.2(b), are therefore debt collectors as that term is
4 defined by California Civil Code § 1788.2(c).

5 16. This case involves money, property or their equivalent, due or owing or
6 alleged to be due or owing from a natural person by reason of a consumer
7 credit transaction. As such, this action arises out of a consumer debt and
8 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

9 **FACTUAL ALLEGATIONS**

10 17. At all times relevant to this matter, Plaintiff was an individual residing within
11 the State of California.

12 18. At all times relevant, Defendants conducted business within the State of
13 California.

14 19. Sometime before December 6, 2007, Plaintiff is alleged to have incurred
15 certain financial obligations.

16 20. These financial obligations were primarily for personal, family or household
17 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.
18 §1692a(5).

19 21. These alleged obligations were money, property, or their equivalent, which is
20 due or owing, or alleged to be due or owing, from a natural person to another
21 person and are therefore a "debt" as that term is defined by California Civil
22 Code §1788.2(d), and a "consumer debt" as that term is defined by California
23 Civil Code §1788.2(f).

24 22. Sometime thereafter, but before January 28, 2008, Plaintiff allegedly fell
25 behind in the payments allegedly owed on the alleged debt. Plaintiff currently
26 takes no position as to the validity of this alleged debt.

HYDE & SWIGART
San Diego, California

- 1 23. Subsequently, but before January 28, 2008, the alleged debt was assigned,
2 placed, or otherwise transferred, to Defendant LVNV Funding LLC for
3 collection.
- 4 24. On or about January 28, 2008, Defendant Mann Bracken LLC, on behalf of
5 Defendant LVNV Funding LLC, filed a lawsuit against Plaintiff in the
6 Superior Court of California, County of Riverside, Banning Courthouse, Case
7 No. BAC010307.
- 8 25. This communication to Plaintiff was a "communication" as that term is
9 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent
10 with 15 U.S.C. § 1692g(a).
- 11 26. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)
12 defines that phrase, and an "initial communication" consistent with Cal. Civ.
13 Code § 1812.700(b).
- 14 27. In filing the aforementioned Complaint, Defendant LVNV Funding attempted
15 to collect a debt in which the applicable statute of limitations had expired,
16 thereby constituting an unfair or unconscionable means to collect or attempt
17 to collect a debt because Defendants was attempting to collect an amount
18 when such amount was not expressly authorized by the agreement creating
19 the debt or permitted by law. This action violated 15 U.S.C. § 1692f and 15
20 U.S.C. § 1692f(1). Because this action violated the language in 15 U.S.C. §
21 1692f and 15 U.S.C. § 1692f(1), it also violated Cal. Civ. Code 1788.17.
- 22 28. During the pendency of the State Court action, Plaintiff's counsel failed to
23 receive notice of the Case Management Hearing held on July 11, 2008, and
24 Order To Show Cause Hearing on August 22, 2008, and therefore did not
25 participate in the aforementioned hearings.
- 26 29. At the August 22, 2008, Order To Show Cause Hearing, the Superior Court
27 struck Plaintiff's Answer and Cross-Complaint, permitting Defendant LVNV
28 Funding LLC to proceed with a default judgment against Plaintiff.

30. Defendants failed to notify Plaintiff of the action taken by the Superior Court at the Order To Show Cause Hearing on August 22, 2008, in an attempt to illegally collect the alleged debt by default judgment.

31. This action was a false, deceptive, or misleading representation or means in connection with the collection of the alleged debt. As such, this action by Defendant Mann Bracken LLC violated 15 U.S.C. §§ 1692e and 1692e(10), and because this action violated the language in 15 U.S.C. §§ 1692e and 1692e(10), it also violated Cal. Civ. Code § 1788.17.

32. Defendants failure to inform Plaintiff's counsel of the action taken at the Order to Show Cause Hearing and proceed against Plaintiff with a default judgment further constituted an unfair or unconscionable means to collect or attempt to collect a debt in violation of 15 U.S.C. § 1692f. Because this action violated the language in 15 U.S.C. § 1692f and 15 U.S.C. § 1692f(1), it also violated Cal. Civ. Code 1788.17.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II**VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT****CAL. CIV. CODE §§ 1788-1788.32**

36. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
37. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.
38. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from each and every defendant, as follows:

COUNT I**FAIR DEBT COLLECTION PRACTICES ACT****15 U.S.C. §§ 1692 ET SEQ.**

39. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
40. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
41. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

42. An award of actual damages pursuant to California Civil Code § 1788.30(a);
43. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
44. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

45. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: _____

Hyde & Swigart

By: _____

Joshua B. Swigart
Attorneys for the Plaintiff

HYDE & SWIGART
San Diego, California

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Patricia Ruben

(b) County of Residence of First Listed Plaintiff Riverside
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

LVNV Funding LLC and Mann Bracken LLC

County of Residence of First Listed Defendant Charleston
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

APR 23 2009

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTY (For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 1 PTF ☐ 1 ☐ 1
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.

Brief description of cause:
FUDCA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
75,000

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/22/09

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

70

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

TB 4/23/09

ORIGINAL

Court Name: USDC California S
outhern
Division: 3
Receipt Number: CAS000070
Cashier ID: mbain
Transaction Date: 04/23/2009
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: RUBEN VS LVNV FUNDING L
LC
Case/Party: D-CAS-3-09-CV-00
0852-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3034
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned chec
k.